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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	CC Docket No. 94-54
Pertaining To	)	
Commercial Mobile Radio Services	)	

OPPOSITION TO
PETITION FOR RECONSIDERATION OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429(f), the Cellular Telecommunications Industry Association ("CTIA")[1] hereby submits its Opposition to the Petition for Reconsideration in the above captioned proceeding.[2]

I. INTRODUCTION

In the Order, the Commission closed an important chapter in its implementation of Section 332 of the Communications Act of 1934 ("Act"), amended by Congress in 1993. In Section 332, Congress sought to establish a framework for CMRS regulation that did not unnecessarily burden mobile wireless carriers with onerous regulatory mandates. With respect to

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1 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2 Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Fourth Report and Order*, FCC 00-253 (rel. July 24, 2000) ("Order"); Petition for Reconsideration filed by the Association of Communications Enterprises ("Ascent") (formerly the Telecommunications Resellers Association) (filed Sep. 13, 2000) ("Petition").

CMRS carriers' interconnection obligations, it amended Section 332 to make clear that CMRS providers were entitled to interconnect with other networks, and, importantly, were not subject to any additional interconnection obligations other than those found in Section 201 of the Act. In the intervening years since the initiation of this proceeding,[3] Congress also amended Section 251 of the Act to further clarify the interconnection rights and obligations of all telecommunications carriers. The Order represents a careful analysis of the legal obligations of CMRS carriers to provide interconnection as specified in the Act, the Commission's obligations to order interconnection, and the public policy considerations which counsel against a broad rule mandating CMRS reseller switch interconnection.

In its Petition, Ascent fails to take aim at any of these Commission actions. Rather, it goes to some length explaining principles of administrative law and judicial precedent which are unrelated to the Commission's conclusions in the Order. Ultimately, rather than reconsideration, Petitioner seeks a declaration that the Commission will "consider specific requests for interconnection."[4] As a result, the Petition should be dismissed forthwith and this matter should be closed. To do otherwise would invite Petitioners to continue to file superfluous pleadings and immaterial arguments.

II. THE PETITION FAILS TO PROVIDE ANY RATIONAL BASIS FOR COMMISSION RECONSIDERATION OF THE ORDER.

Under the Commission's Rules, a petition for reconsideration must "state with particularity the respects in which petitioner believes the action taken should be changed."[5] A

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3 See Order at ¶¶ 2-6 (providing a procedural history of this proceeding).

4 Petition at 14.

5 47 C.F.R. § 1.429(c).

review of the Petition demonstrates that there is no particular holding in the Order that the Petitioner believes "should be changed." Instead, the Petitioner has asked the Commission to "establish on reconsideration that it will consider specific requests for interconnection on the facts presented."[6] In support of this request, Petitioner misstates the Commission's decision in the Order and misstates the requirements of the Act.

The Commission made clear in the Order that CMRS providers' interconnection obligations are governed by Sections 332, 201, and 251 of the Act. By its terms, Section 332 only requires CMRS providers to interconnect pursuant to the terms of Section 201 of the Act. In fact, Congress made clear that Section 332 "shall not be construed as a limitation or expansion of the Commission's authority to order interconnection [pursuant Section 201]."[7] Under Section 201, the Commission is required to order carriers to interconnect only when, "after opportunity for hearing, [it] finds such action necessary or desirable in the public interest."[8] Clearly, Section 201 does not require the Commission to establish by rule the interconnection obligations the resellers have pursued for some time. To the contrary, Section 201 only requires the Commission to order interconnection after a hearing and after a Commission determination that such interconnection would be in the public interest. This is what the Commission held in the Order. Petitioners do not disagree.[9]

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6 Petition at 14.

7 47 U.S.C. § 332(c)(1)(B).

8 47 U.S.C. § 201(a); Order at ¶ 9.

9 See Petition at 4-5 (Petitioner does not disagree with the Commission's decision declining to adopt a broad rule mandating CMRS reseller switch interconnection. Rather, it requests that the Commission modify its Order, without explaining in what respects, "and confirm the correct meaning of Section 201. . . . [T]he Commission should

Recognizing that the Commission has not in fact contradicted the requirements of Section 332 or 201, Petitioner instead sets up and knocks down a straw man. Without any basis in the Order, the Petitioner contends that the Commission somehow "decid[ed], in advance, that no set of facts could ever justify an order for physical interconnection with a CMRS provider."[10] Nowhere in the Order can Petitioner find support for such an assertion. Rather, the Commission clearly held that "neither Sections 201 and 332 nor our past precedents require us to mandate interconnection between CMRS networks and resellers' switches."[11] The Petitioner interprets this to mean that "the Commission thus clearly intended to foreclose any request for interconnection by a wireless switch-based reseller."[12] Of course, the Commission did not say this. It merely reflected in its conclusions the plain language of Section 201, which by its terms, does not require a broad rule mandating reseller switch-based interconnection.

The Petitioner then spends several pages explaining how the Commission cannot foreclose individual requests for interconnection.[13] First, Petitioner contends that denying individual requests for interconnection would be akin to a blanket refusal to entertain waiver requests.[14] Second, Petitioner explains how, under Section 201(a) and judicial precedent under Section 201, the Commission has an obligation to consider individual requests for

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reconsider the impact of its approach in the [Order] to preserve its ability to consider and grant in the future requests for interconnection that are necessary or desirable.").

10 Petition at 5.

11 Order at ¶ 9 (emphasis added).

12 Petition at 7.

13 Petition at 9-14.

14 Petition at 9-10.

interconnection.[15] While all of this may be true, it is irrelevant to the Order. The fact of the matter is that there is no basis in the Order for the Petitioner to reasonably conclude that the Commission will not entertain individual requests for interconnection.

Furthermore, in reviewing the Commission's analysis of the Section 251[16] obligations of CMRS providers, the Petitioner again constructs a straw man argument to oppose a Commission conclusion which has no basis in the Order. Petitioner contends that "Section 251(a) of the 1996 Telecommunications Act provides no support for the Commission's view that direct, physical interconnection with a CMRS provider's facilities is never warranted."[17] A review of the Order, however, demonstrates that the Commission did not determine that direct interconnection is "never warranted." Rather, the Commission stated quite clearly that indirect interconnection, through the facilities of the ILEC, meets the requirements of Section 251(a), "thus . . . [neither] the Communications Act [n]or Commission precedent requires the Commission to mandate reseller switch interconnection."[18]

The Commission's interpretation of the plain meaning of Section 251 is clearly correct. By its express terms, Section 251 does not mandate direct interconnection between CMRS providers and resellers. Section 251(a) permits either direct or indirect interconnection.[19] And,

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15 Petition at 11-14.

16 47 U.S.C. § 251.

17 Petition at 9 (citing Order at ¶ 13) (emphasis added).

18 Order at ¶ 13 (emphasis added).

19 47 U.S.C. § 251(a)(1); Order at ¶ 13 ("Section 251(a) . . . requires that each telecommunications carrier 'interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.' As we have stated in the past, CMRS providers are obligated to comply with this section, but that indirect interconnection (e.g.

as the Commission has concluded in the past, interconnection through the networks of local exchange carriers satisfies this requirement.[20] As made clear above, Petitioner does not disagree. Petitioner simply wants the Commission to declare that it will not foreclose for all eternity the possibility that direct interconnection at some point in the unknowable future may be in the public interest. Such a declaration is unnecessary in light of black letter law principles, some of which the Petition itself cites for support.[21]

Regarding Section 251, it is also critical to make clear that the resellers' request for switch-based interconnection with the networks of CMRS providers is more akin to a request for access to unbundled network elements, not the interconnection of networks as contemplated by Section 251(a).[22] Understood in the terms of the Commission's interconnection rules, it is a request for all network elements of local CMRS service, except for local switching which the

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two carriers other than incumbent LECs connecting with an incumbent LEC's network) satisfies this obligation.) (citations omitted).

20 See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98; 95-185, *First Report and Order*, 11 FCC Rcd 15499 at ¶ 997 (1996) ("Interconnection First Report and Order").

21 See Petition at 10 (citing WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969) (holding that "[a]n agency need not sift pleadings and documents . . . but allegations . . . stated with clarity and accompanied by supporting data, are not subject to perfunctory treatment, but must be given a hard look.")).

22 See Order at ¶ 2 (explaining that "resellers have proposed to place their switches between the mobile telephone switching office (MTSO) of the cellular carrier and the facilities of the [LEC] or [IXC]. They claim that these switches would allow them to route traffic and bill customers on a real-time basis."); see also id. at ¶ 8 (noting that permitting resellers to interconnect their switches with the networks of CMRS providers would require CMRS carriers to "unbundle the elements of their network in order to interconnect with a reseller that has its own switch, but otherwise lacks its own network."); id. at ¶ 19 ("[A] CMRS reseller's switch, as described in this proposal, would not replace the wireless CPE at the end of a call, but would either replace or supplement the facilities-based CMRS provider's [MTSO] switch in the 'middle' of a CMRS call.").

reseller would provide over its own switching equipment.[23] Therefore, a request for reseller switch interconnection should be governed by the requirements of Section 251(c), not Section 251(a). Under the terms of Section 251(c), obligations for the unbundling of network elements only attach to the networks of Incumbent Local Exchange Carriers, not CMRS providers.[24] The Commission has never extended such obligations to competitive carriers, including CMRS providers. In addition, had Congress intended to grant wireless resellers the right to interconnect their switches with the networks of carriers other than incumbent LECs, Congress would have included other carriers, such as CMRS providers, within the requirements of Section 251(c).

Under the terms of the Act, it is clear that it is within the Commission's discretion to determine whether to order CMRS providers to interconnect. In the Second part of the Order, the Commission addresses this discretion. It concludes that "the public interest does not support the establishment of a rule requiring that facilities-based CMRS carriers interconnect with reseller switches."[25] Petitioner fails to oppose this conclusion or to raise any evidence to the contrary. Instead, the Petition vaguely suggests that interconnection of all networks will be essential to creating a "network of networks."[26] Clearly, the Commission (as does CTIA) favors

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23 See 47 C.F.R. § 51.301, *et seq.*

24 47 U.S.C. § 251(c)(3); see Interconnection First Report & Order at ¶¶ 328-41 (Herein the Commission goes to great length to explain the difference between resale and purchasing unbundled network elements. It concludes that "reselling incumbent LEC services [is] limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that incumbents do not offer."); see also id. at ¶¶ 410-24 (concluding that incumbent LECs must separate "Local Switching Capability" as an unbundled network element which competitors may choose to purchase from the ILEC, or to provide for themselves while purchasing the rest of the ILEC's network capabilities).

25 Order at ¶ 19.

26 Petition at 4

the continued expansion of telecommunications networks nationwide. Whether this is done through direct interconnection or through indirect interconnection with ILEC networks, however, should be decided on a particularized basis after finding specific instances that support either course.

Ultimately, this Petition should be seen for what it clearly is -- an effort by Petitioners to prolong this proceeding indefinitely. The Petition unnecessarily attempts to prolong this proceeding by requesting the Commission to establish (through reconsideration) basic principles of administrative law -- that the Commission may, in its discretion, act by rulemaking or case-by-case adjudication and, when individual cases present changed circumstances, the Commission may determine on a case-by-case basis whether mandatory interconnection serves the public interest. This request is both unnecessary and improper under the Commission's Rules for reconsideration.

III. CONCLUSION

For the foregoing reasons and, specifically, for failing to meet the requirements of Section 1.429(c) of the Commission's Rules, CTIA respectfully requests that the Commission dismiss the Petition without further comment.

Respectfully submitted,

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October 11, 2000

CERTIFICATE OF SERVICE

I, Rosalyn Bethke, do hereby certify that on this 11th day of September, 2000, copies of the attached document were served by first-class mail, unless otherwise indicated on the following parties:

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